

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROBERT SAMPSON,

Plaintiff,

v.

STONY BROOK UNIVERSITY; and
MAURIE MCINNIS, in her official capacity
as President of Stony Brook University,

Defendants.

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CIVIL ACTION NO. 2:22-cv-04490 JMA

DECLARATION OF CHARLES WEINER

1. I am over 18 years of age and have personal knowledge of the matters addressed in this Declaration.

2. I am one of the attorneys for the Plaintiff Robert Sampson in the above matter.

3. Over the past 17 years, I have represented several hundreds of individuals with disabilities seeking accommodations pursuant to the Americans with Disabilities Act, 42 U.S.C. §12189 (ADA) on post-secondary entrance examinations, professional licensing examinations and certification examinations.

4. I have counseled individuals on the application process, appeals from denials of accommodations and have filed litigation against several testing entities who have denied individuals with disabilities seeking accommodations.

5. Specifically, I have filed several matters against the National Board of Medical Examiners including the following:

- a. *Brendan J. Berger v. National Board of Medical Examiners*, 19-cv-00099, U.S.D.C. S.D. Ohio., 2019 WL 4040576 (S.D. Ohio, August 27, 2019).

- b. *Emily Behling v. National Board of Medical Examiner*, 19-cv-01732, U.S.D.C. Conn.
- c. *Amy C. Custer v. National Board of Medical Examiners*, 18-cv-00109, U.S.D.C. N.D. Ohio.
- d. *Lauren S. Rosenblatt v. National Board of Medical Examiners*, 5:15-cv-00953, U.S.D.C. W.D.TEX.
- e. *Aaron Hartman v. National Board of Medical Examiners*, 09-cv-5028, U.S.D.C. E.D.PA, 2010 WL 1071423 (E.D. Pa., March 22, 2010); *vacated as moot* by 2010 WL 4461673 (E.D. Pa., October 18, 2010).

6. During the summer 2022, I was retained to represent Mr. Sampson in connection with his disputes against Stony Brook University and the National Board of Medical Examiners (NBME).

7. In an effort to avoid litigation and amicably resolve Mr. Sampson's dispute with the NBME, I wrote to NBME's national litigation counsel Robert Burgoyne, Esquire on July 18, 2022, requesting a response by August 1, 2022. A true and correct copy of this letter is attached as Exhibit 2-A

8. By email dated July 22, 2022, Mr. Burgoyne responded indicating he was out of the country and not returning until the following week. Mr. Burgoyne further advised that he contact NBME but that he did not anticipate being able to respond by August 1, 2022. A true and correct copy of this email chain is attached as Exhibit 2-B.

9. By email dated August 4, 2022, after not receiving a response from NBME, I sent a follow up reminder email to Mr. Burgoyne, inquiring as to when we might expect a response from NBME. Ex. 2-B.

10. By email dated August 26, 2022, after not receiving any response from NBME, I sent an email to Mr. Burgoyne along with a courtesy copy of a complaint. I advised that we intended to file in this Court and requested NBME's prompt attention. A true and correct copy of this e-mail is attached as Exhibit 2-C

11. No response was received from NBME or its counsel.

12. On August 29, 2022, Plaintiff's Complaint against NBME was filed with this court. See. *Robert Sampson v. National Board of Medical Examiners*, 2:22-cv-005120-JMA (Doc. 1)

13. Counsel for Defendant approach Plaintiff's counsel, Mary Vargas via e-mail about dismissing President McInnis as a defendant. A true and correct copy of this e-mail chain is attached as Exhibit 2-D.

14. Plaintiff's counsel indicated that it would agree to dismiss McInnis, provided that Stony Brook did not assert sovereign immunity as a bar to declaratory or injunctive relief. Exhibit 2-D.

15. Stony Brook declined to so stipulate. Exhibit 2-D.

16. I declare under penalty of perjury that the foregoing statements are true and correct.

Date: September 23, 2022

Respectfully submitted

/s/ Charles Weiner
Charles Weiner, Esquire
LAW OFFICE OF CHARLES WEINER
99 Lantern Drive, Suite 202
Doylestown, PA 18901
Tel: (267) 685-6311
charles@charlesweinerlaw.com

Attorney of Plaintiff, Robert Sampson

EXHIBIT 2-A



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267-685-6311
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www.CharlesWeinerLaw.com

July 18, 2022

VIA E-MAIL/rburgoyne@perkinscoie.com & cmew@perkinscoie.com

Robert Burgoyne, Esquire
Caroline Mew, Esquire
Perkins Coie
700 13th Street, N.W.
Suite 800
Washington, D.C. 20005

Re: Robert D. Sampson v. NBME

Dear Bob:

This office along with the attorneys of Stein & Vargas, LLP represent Robert D. Sampson, concerning the administration of the USMLE Step 1 exam. We intend to file litigation against NBME for its discriminatory denial of Mr. Sampson's requests for accommodations, which included 100% extended time and additional break time. We are contacting you as a courtesy, and with the hope that you can impress upon NBME to reverse its denial of accommodations and provide the requested accommodations before we file suit.

Mr. Sampson is an individual with a disability pursuant to the Americans with Disabilities Act 28 U.S.C. § 12101 et seq. (ADA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504). Mr. Sampson meets the DSM-5 diagnosis criteria for Specific Learning Disorder with impairment in reading (reading comprehension and reading fluency) and impairment in written expression. Mr. Sampson also meets the criteria for Attention Deficit Hyperactivity Disorder, combined presentation. Comprehensive neuropsychological testing conducted at the Mount Sinai Medical College ("Mount Sinai") resulted in a determination that Mr. Sampson requires extended time on testing and extended breaks. The results of this most recent testing at Mount Sinai were consistent with prior neuropsychological testing in all respects except new testing found that Mr. Sampson required double time rather than the time and half that was previously recommended. Mr. Sampson's medical school considered the Mount Sinai evaluation and, pursuant to the ADA and Section 504, approved double extended time for all testing.

Mr. Robert Burgoyne, Esquire

Re: Sampson v. NBME

July 18, 2022

Page 2 of 2

Despite submitting substantial documentation supporting the need for accommodations, including reports of interventions during his developmental period, NBME rejected Mr. Sampson's request for accommodations multiple times and most recently on June 1, 2022.

Kindly advise whether the NBME wishes to resolve this matter in accordance with the foregoing request. In exchange, we shall forebear from filing suit. If NBME is unwilling to resolve this matter, we shall commence our preparation and filing of a Complaint and Motion for Preliminary Injunction. We request a response from you by August 1, 2022. We are available if you wish to discuss this matter.

Thank you for your consideration.

Very truly yours,

/s/

Charles Weiner

cc: Mary C. Vargas, Esq. (via email)
Michael S. Stein, Esq. (via email)

EXHIBIT 2-B

Subject: Re: Robert D. Sampson / NBME
Date: Thursday, August 4, 2022 at 4:46:43 PM Eastern Daylight Time
From: Chuck Weiner
To: Burgoyne, Robert (WDC), Mew, Caroline (WDC)
CC: Mary Vargas, Michael Stein
Attachments: image001.png, image002.png

Hi Bob:

Hope you're enjoying the time off. Just following up on this matter to see when we might expect a response from NBME.

Best,
Chuck



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From: "Burgoyne, Robert (WDC)" <RBurgoyne@perkinscoie.com>
Date: Friday, July 22, 2022 at 9:25 AM
To: Chuck Weiner <charles@charlesweinerlaw.com>, "Mew, Caroline (WDC)" <CMew@perkinscoie.com>
Cc: Mary Vargas <mary.vargas@steinvargas.com>, Michael Stein <michael.stein@steinvargas.com>
Subject: RE: Robert D. Sampson / NBME

Hello Charlie,

My apologies for the delayed response. I am out of the country until next week and have not been reading or responding to emails as regularly as I ordinarily would.

I will contact NBME as soon as I can when I get back, but I don't anticipate being able to get you a response by the requested August 1 date. Just wanted to give you a heads up so that you know where this stands.

Best,

Bob

From: Chuck Weiner <charles@charlesweinerlaw.com>

Sent: Monday, July 18, 2022 3:04 PM

To: Burgoyne, Robert (WDC) <RBurgoyne@perkinscoie.com>; Mew, Caroline (WDC) <CMew@perkinscoie.com>

Cc: Mary Vargas <mary.vargas@steinvargas.com>; Michael Stein <michael.stein@steinvargas.com>

Subject: Robert D. Sampson / NBME

This office along with the attorneys of Stein & Vargas, LLP represent Robert D. Sampson, concerning the administration of the USMLE Step 1 exam. Kindly review the attached letter.



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EXHIBIT 2-C

Subject: Sampson v. NBME
Date: Friday, August 26, 2022 at 11:02:59 AM Eastern Daylight Time
From: Chuck Weiner
To: Burgoyne, Robert (WDC)
CC: Mary Vargas, Michael Stein
Attachments: 2022-08-26 Complaint NBME.pdf, image001.png

Bob:

We appreciate you keeping us updated on the status of NBME's review; however, it has taken a considerable amount of time, much to the detriment of Mr. Sampson's education and career endeavors. Accordingly, enclosed is a courtesy copy of the complaint we intend to file in the U.S. District Court, E.D.N.Y.

Should NBME decide to approve Mr. Sampson for accommodations, kindly let us know.

Thank you for your prompt attention to this matter.



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EXHIBIT 2-D

From: Lynch, Helena <Helena.Lynch@ag.ny.gov>
Date: Tuesday, August 23, 2022 at 11:27 AM
To: Mary Vargas <mary.vargas@steinvargas.com>
Subject: RE: Sampson

Hi Mary,

Thank you for your response. We will withdraw the request for now rather than delving deeper into merits questions.

Helena Lynch | Assistant Attorney General
Office of the New York State Attorney General
Nassau Regional Office
200 Old Country Road, Suite 240 | Mineola, New York 11501
(516) 248-3312 (desk) | (347) 899-5515 (mobile)
helena.lynch@ag.ny.gov

From: Mary Vargas <mary.vargas@steinvargas.com>
Sent: Wednesday, August 17, 2022 1:10 PM
To: Lynch, Helena <Helena.Lynch@ag.ny.gov>
Subject: Re: Sampson

[EXTERNAL]

Helena,

Thank you for providing the waiver of service. I will get that filed.

In answer to your question from yesterday about President McInnis – if Stony Brook is willing to stipulate that sovereign immunity does not bar declaratory and injunctive relief and that we do not need Ex Parte Young to obtain such relief, then we would be willing to dismiss President McInnis.

Mary

From: Lynch, Helena <Helena.Lynch@ag.ny.gov>
Date: Wednesday, August 17, 2022 at 10:15 AM
To: Mary Vargas <mary.vargas@steinvargas.com>
Subject: RE: Sampson

Good morning Mary,

Here a waiver of service form for both SBU and Maurie McInnis. Maurie McInnis signed for both even though the parties are now represented.

Helena Lynch | Assistant Attorney General
Office of the New York State Attorney General
Nassau Regional Office
200 Old Country Road, Suite 240 | Mineola, New York 11501
(516) 248-3312 (desk) | (347) 899-5515 (mobile)
helena.lynch@ag.ny.gov

From: Lynch, Helena
Sent: Tuesday, August 16, 2022 1:00 PM
To: mary.vargas@steinvargas.com
Subject: Sampson

Good afternoon Mary,

Apologies that we have not yet provided the waiver of service forms. We will do so asap but in the meantime you may rely upon our representation that we will waive further service of process.

In the meantime, I wonder if your client would consider dismissing President McInnis as a defendant. The reason for the request is that no individual liability is recognized under the ADA or the RA (regardless of official vs. personal capacity). This would allow the parties and the court to better focus on the substantive issues. Please consider and let us know, at your convenience.

Thank you,

Helena Lynch | Assistant Attorney General
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